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**REGULATIONS GOVERNING  
GRADING AND INSPECTION  
Of  
MANUFACTURED OR PROCESSED  
DAIRY PRODUCTS**

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**EFFECTIVE  
JULY 1, 1959**

**U. S. DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
WASHINGTON, D. C.**



These regulations were originally issued July 1951 as Service and Regulatory Announcement No. 169 of the Production and Marketing Administration. They have been amended in March 1952, August 1955, March 1956, April 1957, September 1957 and July 1959. The regulations as amended are set forth in this pamphlet.

Information with reference to the grading and inspection services may be obtained from

Chief, Inspection and Grading Branch  
Dairy Division  
Agricultural Marketing Service  
United States Department of Agriculture  
Washington 25, D. C.

## UNITED STATES DEPARTMENT OF AGRICULTURE

## AGRICULTURAL MARKETING SERVICE —

## SERVICE AND REGULATORY ANNOUNCEMENTS NO. 169

## SUB PART A—REGULATIONS

GOVERNING THE GRADING, INSPECTION,  
SAMPLING, GRADE LABELING, AND SUPERVISION OF  
PACKAGING OF BUTTER, CHEESE, AND OTHER MANUFACTURED OR PROCESSED DAIRY PRODUCTS

(Title 7, Ch. I, Pt. 58, secs. 58.1-58.63 of the Code of Federal Regulations)

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AUTHORITY: §§58.1 to 58.63 issued under Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U. S. C. 1621 et seq.).

## DEFINITIONS

§ 58.1 *Meaning of words.* Words in the regulations in this part in the singular form shall be deemed to import the plural and vice versa, as the case may demand.

§ 58.2 *Terms defined.* For the purpose of the regulations in this part, unless the context otherwise requires, the following terms shall be construed, respectively, as follows:

(a) "Act" means the applicable provisions of the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U. S. C. 1621 et seq.), or any other act of Congress conferring like authority.

(b) "Administrator" means the Administrator of the Agricultural Marketing Service of the Department, or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated by the Administrator, the authority to act in his stead.

(c) "Applicant" means an interested party who requests any grading service, appeal grading, or regrading with respect to any product.

(d) "Approved laboratory" means one in which the entire facilities and equipment have been approved by the Administrator as being adequate to perform the necessary official tests, in accordance with the rules and regulations.

(e) "Approved plant" means one or more buildings, or parts thereof, comprising a single plant in which the facilities and methods of operation therein have been approved by the Administrator as suitable and adequate for operation under grading or inspection service and in which grading or inspection is carried on in accordance with the regulations in this part and any applicable instructions or specifications issued hereunder.

(f) "Area supervisor" means any employee of the Department in charge of dairy grading and inspection service in a designated geographical area.

(g) "Class" means any subdivision of a product based on essential physical characteristics that differentiate between major groups of the same kind or method of processing.

(h) "Condition" means any condition (including, but not being limited to, the state of preservation, cleanliness, soundness, wholesomeness, or fitness for human food) of any product which affects its merchantability.

(i) "Department" means the United States Department of Agriculture.

(j) "Grader" means any employee of the Department authorized by the Secretary, or any other person to whom a license has been issued by the Secretary, to investigate and certify, in accordance with the act and this part, to shippers of products and other interested parties the class, quality, quantity, and condition of such products.

(k) "Grading or grading service" means: (1) The act of determining, according to the regulations in this part, the class, quality, quantity or condition of any product by examining each unit thereof or a representative sample drawn by a grader or sampler; (2) the act of issuing a grading certificate with respect thereto; (3) the act of identifying, when requested by the applicant, any graded product by means of official identification pursuant to the act and this part; (4) any regrading or any appeal grading of a previously graded product; and (5) inspection including plant survey, processing, manufacturing, packaging, repackaging, condition, or quality control.

(l) "Grading certificate" means an official serially numbered, printed or written form bearing the Department seal issued and signed by a grader, pursuant to the act and this part, relative to the class, quality, quantity, or condition of the products.

(m) "Inspector" means any employee of the Department authorized by the Secretary, or any other person to whom a license has been issued by the Secretary, to inspect and certify quality, quantity, and condition of products, supervise the operation in an approved plant and perform plant surveys.

(n) "Interested party" means any person financially interested in a transaction involving any grading, appeal grading, or regrading of any product.

(o) "National Supervisor" means (1) the officer in charge of dairy inspection and grading service of the Agricultural Marketing Service and (2) such other employee of the Service as may be designated by him.

(p) "Office of grading" means the office of any grader, sampler, or inspector.

(r) "Person" means any individual, partnership, association, business, trust, corporation, or any organized group of persons, whether incorporated or not.

(s) "Product or products" means butter, cheese (whether natural or proc-



cessed), milk, cream, milk products (whether dried, evaporated, stabilized or condensed), ice cream, dry whey, dry buttermilk, and such other perishable dairy products as the Secretary may hereafter designate. Such term shall also include any food product which is prepared or manufactured from any of the aforesaid products if such products constitute at least 50 percent, by weight, of all the ingredients used in the preparation or manufacture of such food product. Such food product shall not contain any fats except milk fats and those fats inherent to the food product graded.

(b) "Quality" means the inherent properties of any product which determine its relative degree of excellence.

(u) "Regulations" means the provisions of this part.

(v) "Sampler" means any employee of the Department authorized by the Secretary, or any other person to whom a license has been issued by the Secretary, to draw samples of products for grading by a grader or for laboratory analysis under the act and this part.

(w) "Sampling" means the act of taking samples of any product for grading, laboratory analysis, or keeping quality test.

(x) "Sampling report" means a statement, either written or printed, issued by a sampler, identifying samples taken by him for grading, laboratory analysis, or keeping quality.

(y) "Secretary" means the Secretary of Agriculture or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

(z) "Service" means Agricultural Marketing Service of the Department.

(aa) "Supervisor of packaging" means any employee of the Department authorized by the Secretary, or any other person to whom a license has been issued by the Secretary, to supervise the packaging and official identification of product, or any repackaging of bulk product.

§ 58.2a *Designation of official certificates, memoranda, marks, other identifications, and devices for purpose of the Agricultural Marketing Act.* Subsection 203 (h) of the Agricultural Marketing Act of 1946, as amended by Public Law 272, 84th Congress, provides criminal penalties for various specified offenses relating to official certificates, memo-

randa, marks, or other identifications, and devices for making such marks or identifications, issued or authorized under section 203 of said act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed below shall have the respective meanings specified:

(a) "Official certificate" means any form of certification, either written or printed, used under this Part to certify with respect to the inspection, class, grade, quality, quantity, or condition of products (including the compliance of products with applicable specifications).

(b) "Official memorandum" means any initial record of findings made by an authorized person in the process of grading, inspecting, or sampling, pursuant to this part, any processing or plant-operation report made by an authorized person in connection with grading, inspecting, or sampling under this part, and any report made by an authorized person of services performed pursuant to this part.

(c) "Official mark" means the grade mark, inspection mark, and any other mark, approved by the Administrator and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product, stating that the product was graded or inspected or both, or indicating the appropriate U. S. grade or condition of the product, or for the purpose of maintaining the identity of products graded or inspected or both under this part, including but not limited to those set forth in §§ 58.49 through 58.51.

(d) "Official identification" means any United States standard designation of class, grade, quality, quantity, or condition specified in this part, or any symbol, stamp, label, or seal indicating that the product has been officially graded or inspected and/or indicating the class, grade, quality, quantity, or condition of the product, approved by the Administrator and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product.

(e) "Official device" means a stamping appliance, branding device, stencil, printed label, or any other mechanically or manually operated tool that is approved by the Administrator for the purpose of applying any official mark or other identification to any product or the



packaging material thereof.

#### ADMINISTRATION

§ 58.3 *Authority.* The administrator shall perform, for and under the supervision of the Secretary, such duties as the Secretary may require in the enforcement and administration of the provisions of the act and this part.

#### GRADING SERVICE

§ 58.4 *Basis of grading service.* Grading service shall be performed in accordance with methods and procedures approved by the Administrator and this part and shall be for class, quality, quantity, and condition or any single factor or combination thereof. Grading service with respect to determining quality of products shall be on the basis of United States standards for grades, Federal specifications, Department quality specifications, or specifications as defined in a specific purchase contract. The supervision of processing, manufacturing, packaging, or repackaging of products shall be in accordance with applicable specifications and instructions as may be approved or issued by the Administrator.

§ 58.5 *Where grading service is offered.* Any product may be graded, inspected, and sampled wherever a grader, sampler, or inspector is available and the facilities and the conditions are satisfactory for the conduct of the grading service.

§ 58.6 *Supervision.* All grading, inspection and sampling service shall be subject to supervision by the area supervisor or national supervisor or such other employee of the service as may be designated by him. Whenever the immediate supervisor of a grader, inspector, or sampler has evidence that such employee incorrectly graded, inspected or sampled a product, such supervisor shall immediately make a regrading, reinspection or resampling of the product and cause to be issued a grading certificate or sampling report which shall supersede the previous grading certificate or sampling report.

#### APPLICATION FOR GRADING, INSPECTION AND SAMPLING

§ 58.7 *Who may obtain grading, inspection and sampling service—*(a) *On fee basis.* An application for grading, inspection, or sampling service may be made by any interested person, including, but not being limited to, the United

States, any State, county, municipality, or common carrier, or any authorized agent of the foregoing.

(b) *On resident basis.* Application for grading service on a resident basis to be performed in an approved plant shall be made in writing on forms approved by the Administrator and filed with the Administrator.

§ 58.8 *How to make application.* An application for any grading service may be made in any office of grading, or with any grader, sampler, or inspector at or nearest the place where the service is desired. Such application for service may be made orally (in person or by telephone), in writing, or by telegraph. If an application for grading service is made orally, the office of grading, grader, sampler, or inspector with whom such application is made, or the Administrator, may require that the application be confirmed in writing.

§ 58.9 *Form of application.* Each application for grading, inspecting, or sampling a specified lot of any product shall include such information as may be required by the Administrator in regard to the product and the premises where such product is to be graded, inspected, or sampled.

§ 58.10 *Filing of application.* An application for grading, inspection, or sampling of a specified lot of any product shall be regarded as filed only when made pursuant to this part.

§ 58.11 *Granting of application.* An application may be granted (a) on fee basis when facilities and conditions are satisfactory for conduct of the grading, inspection or sampling service, and (b) on resident basis when the plant is surveyed and approved for grading, inspection or sampling service.

§ 58.12 *When application may be rejected.* An application for grading, inspection or sampling service may be rejected by the Administrator (a) whenever the applicant fails to meet the requirements of the regulations prescribing the conditions under which the service is made available; (b) whenever the product is owned by or located on the premises of a person currently denied the benefits of the act; (c) where an individual holding office or a responsible position with or having a substantial financial interest or share with the applicant is currently denied the benefits of the act or was responsible in whole or in part for the current denial of the

benefits of the act to any person; (d) when he determines that the application is an attempt on the part of a person currently denied the benefits of the act to obtain grading, inspection or sampling service; (e) when he determines that the product was produced from unwholesome raw material or was produced under insanitary or otherwise unsatisfactory conditions; (f) when it is determined that the product is of illegal composition or is lacking in stability; (g) delinquent payment of fees over 60 days; or (h) non-compliance with the act or regulations in this part or instructions issued hereunder. When an application is rejected, the applicant shall be notified in writing by the area supervisor or his designated representative the reason or reasons for the rejection.

§ 58.13 *When application may be withdrawn.* An application for grading service may be withdrawn by the applicant at any time before the service is performed upon payment, by the applicant, of all expenses incurred by the Service in connection with such application.

§ 58.14 *Authority of applicant.* Proof of the authority of any person applying for any grading service may be required in the discretion of the Administrator.

§ 58.15 *Accessibility and condition of product.* (a) Each product for which grading, inspection or sampling service is requested shall be so conditioned and placed as to permit a proper determination of the class, quality, quantity, or condition of such product. The room or area where the service is to be performed shall be clean and sanitary, free from foreign odors and shall be provided with adequate lighting, ventilation and temperature control.

(b) The applicant shall be entirely responsible for furnishing sample packages that are truly representative of the class, quality, quantity and condition of the lot and each unit thereof. When there is any indication that the samples furnished are not truly representative additional samples shall be made available for verification.

§ 58.16 *Disposition of samples of graded product.* Any sample of graded product may be returned to the applicant at his request and at his expense if such request was made at the time of the application for the grading service. In

the event the aforesaid request was not made at the time of application for the grading service, the sample of product may be disposed of to any recognized charitable organization or in any other manner which is approved by the Administrator.

§ 58.17 *Order of service.* Grading service shall be performed, insofar as practicable, in the order in which applications therefor are made except that precedence may be given to any such applications which are made by the United States (including, but not being limited to, any instrumentality or agency thereof) and to any application for an appeal grading. The Service, its officers and employees, shall not be liable for damages occurring through acts of commission or omission in administration of this part.

§ 58.18 *Grading certificates and sampling report forms.* Grading certificates (including appeal grading certificates and regrading certificates) and sampling report forms shall be issued on forms approved by the Administrator.

§ 58.19 *Grading certificate issuance.* Each grader and each inspector shall issue a grading certificate covering product graded. Lots of miscellaneous dairy products comprising more than one kind of product may be covered by a single grading certificate. In no case shall a grader or inspector sign any certificate covering any product not graded by him.

§ 58.20 *Disposition of grading certificates.* The original of any grading certificate issued pursuant to § 58.19, and not to exceed four copies thereof, shall, immediately upon issuance, be delivered or mailed to the applicant or person designated by him. One copy shall be filed in the office of grading serving the area in which the grading service was performed, and all other copies shall be filed in such manner as the Administrator may approve. Additional copies of any such certificate may be supplied to any interested party as provided in § 58.41.

§ 58.21 *Advance information.* Upon request of an applicant, all or part of the contents of any grading certificate issued to such applicant may be telephoned or telegraphed to him, or to any person designated by him, at applicant's expense.



## APPEAL GRADING AND REGRADING

§ 58.22 *When appeal grading may be requested.* An application for an appeal grading may be made by any interested party who is dissatisfied with any determination stated in any grading certificate, if the identity of the samples, or the product, has not been lost; and such application for an appeal grading shall be made within two days following the day on which the grading was performed. Upon approval by the Administrator, the time within which an application for an appeal grading may be made may be extended.

§ 58.23 *How to obtain appeal grading.* Appeal grading may be obtained by filing a request therefor, (a) with the Administrator, (b) with the grader or inspector who issued the grading certificate with respect to which the appeal grading is requested, (c) with the immediate supervisor of such grader or inspector, or (d) with the officer in charge of any office of grading. The application for appeal grading shall state the reasons therefor and may be accompanied by a copy of the aforesaid grading certificate or any other information the applicant may have secured regarding the product, at the time of grading, from which the appeal is requested. Such application may be made orally (in person or by telephone), in writing, or by telegraph. If made orally, written confirmation may be required.

§ 58.24 *Record of filing time.* A record showing the date and hour when each such application for appeal grading is received shall be maintained in such manner as the Administrator may prescribe.

§ 58.25 *When an application for an appeal grading may be refused.* If it appears to the Administrator that the reasons for an appeal grading are frivolous or not substantial, or that the quality or condition of the products has undergone a material change since the grading from which the appeal is made, or the identical products graded cannot be made accessible for regrading, or the act or this part has not been complied with, the Administrator may refuse the applicant's request for the appeal grading; and such applicant shall be promptly notified of the reason for such refusal.

§ 58.26 *When an application for an appeal grading may be withdrawn.* An application for appeal grading may be withdrawn by the applicant at any time before the appeal grading is made upon payment, by the applicant, of all expenses incurred by the Service in connection with such application.

§ 58.27 *Order in which appeal gradings are performed.* Appeal gradings shall be performed, insofar as practicable, in the order in which applications therefor are received; and any such application may be given precedence pursuant to § 58.17.

§ 58.28 *Who shall make appeal gradings.* An appeal grading of any graded product shall be made by any grader (other than the one from whose grading the appeal is made) designated for this purpose by the Administrator; and whenever practical, such appeal grading shall be conducted jointly by two such graders.

§ 58.29 *Appeal grading certificate.* Immediately after an appeal grading has been completed, an appeal grading certificate shall be issued showing the results of such appeal grading. Such certificate shall thereupon supersede the grading certificate for the product involved and such supersedure shall be effective as of the time of issuance of the grading certificate with respect to which the appeal is made. Each appeal grading certificate shall clearly set forth the number and the date of the grading certificate which it supersedes. The provisions of § 58.18 to § 58.21, both inclusive, shall, whenever applicable, also apply to appeal grading certificates except that copies of such appeal grading certificates shall be furnished each interested party of record.

§ 58.30 *Application for regrading of a graded product.* An application for the regrading of any previously graded product may be made at any time by any interested party; and such application shall clearly indicate the reasons for requesting the regrading. The provisions of the regulations relative to grading service shall apply to regrading service.

§ 58.31 *Regrading certificate.* Immediately after a regrading has been completed, a regrading certificate shall be issued showing the results of such regrading; and such certificate shall there-



upon supersede, as of the time of issuance of the regrading certificate, the grading certificate previously issued for the product involved. Each regrading certificate shall clearly set forth the number and date of the grading certificate which it supersedes. The provisions of § 58.18 to § 58.21, both inclusive, shall, whenever applicable, also apply to regrading certificates except that copies of such regrading certificates shall be furnished each interested party of record.

§ 58.32 *Superseded certificates.* When any grading certificate is superseded in accordance with this part, such certificate shall become null and void and, after the effective time of the supersedeure, shall no longer represent the class, quality, quantity, or condition of the product described therein. If the original and all copies of such superseded certificate are not delivered to the person issuing the regrading or appeal grading certificate, he shall notify such persons as he considers necessary to prevent fraudulent use of the superseded certificate.

#### AUTHORIZATION AND LICENSING OF GRADERS, INSPECTORS, SAMPLERS, AND SUPERVISORS OF PACKAGING

§ 58.33 *Who may be authorized or licensed.* Any person possessing proper qualifications, as determined by an examination for competency, held at such time and in such manner as may be prescribed by the Administrator, may, (a) if an employee of the Department, be authorized by the Secretary, or (b) if not an employee, be licensed by the Secretary, as a grader, inspector, sampler, or supervisor of packaging for the performance of the applicable duties. Each prospective licensee, other than a State employee, shall, prior to the issuance of the license, procure and deliver to the Service a surety bond, issued by such surety as may be approved by the Administrator, in the amount of \$1,000 for the proper performance of the duties of such person as a licensee under the act and this part. Each authorization, and each license, issued by the Secretary shall be countersigned by the Administrator.

§ 58.34 *Suspension or revocation of authority or license.* Pending final action by the Secretary, the Administrator may, whenever he deems such action necessary, suspend the authority or

license issued to any person pursuant to this part, by giving written notice of such suspension to such person, accompanied by a statement of the reasons therefor. Within seven days after receipt of the aforesaid notice, such person may file a written appeal with the Secretary, supported by any argument or evidence such person may wish to offer as to why his authority or license should not be suspended or revoked. After the expiration of the aforesaid seven day period and consideration of such argument and evidence, the Secretary will take such action as he deems appropriate with respect to such suspension or revocation.

§ 58.35 *Cancellation of authority or license.* Upon termination of any person's services as a grader, inspector, sampler, or supervisor of packaging, he shall surrender the authority or license, issued to him pursuant to this part, for cancellation by the Administrator.

§ 58.36 *Surrender of Authority or license.* Each authority, and each license, that is suspended or revoked, or has expired, shall be surrendered by the holder thereof to his immediate superior.

#### FEES AND CHARGES

§ 58.37 *Payment of fees and charges.* (a) Fees and charges for any grading service shall be paid by the interested party, making the application for such grading service, in accordance with the applicable provisions of this section and § 58.38 to § 58.48, both inclusive; and, if so required by the grader, inspector, or sampler, such fees and charges shall be paid in advance.

(b) Fees and charges for any grading service performed by any grader, inspector, or sampler who is a salaried employee of the Department, shall, unless otherwise required pursuant to paragraph (c) of this section, be paid by the interested party making application for such grading service by check, draft, or money order payable to the Treasurer of the United States and remitted promptly to the Service.

(c) Fees and charges for any grading service under a cooperative agreement with any State or person shall be paid in accordance with the terms of such cooperative agreement by the interested party making application for any such grading service.

§ 58.38 *On a fee basis.* (a) Unless otherwise provided in this section, the

fees to be charged and collected for any service (other than for an appeal grading) performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in § 58.43 to § 58.46, both inclusive.

(b) In the event the aforesaid applicable rates are deemed by the Administrator to be inadequate fully to reimburse the Service for all costs and other items paid or incurred by the Service in connection with such service, the fees for such service shall not be based on the rates specified in §§ 58.43 to 58.46, but shall be based on the time required to perform such service and the travel of each grader, inspector, sampler, and supervisor of packaging at the rate of \$5.00 per hour for the time actually required.

(c) If an applicant requests that any grading service be performed on a holiday or a non-work day, or at a time other than during the grader's normal working hours, he shall be charged for such service at a rate one and one-half times the rate which would be applicable for such service if performed during the grader's normal working hours.

(d) Charges for grading service not specifically set forth in paragraphs (a), (b) and (c) of this section including inspection for condition of product, plant surveys and other miscellaneous service shall be based on the time required to perform such service and travel of each grader, inspector, sampler or supervisor of packaging, at the rate of \$5.00 per hour for the time actually required.

#### § 53.39 Fees for grading samples.

The fee to be charged for the grading of each lot of samples of any product shall be based on the actual time required to perform the service and shall be at the rate of \$5.00 per hour, with a minimum charge of \$2.50 for each such lot of samples.

§ 58.40 *Fees for appeal grading.* The fees to be charged for any appeal grading shall be double the fees specified in the grading certificate from which the appeal is taken: *Provided*, That the fee for any appeal grading requested by the United States, or any agency or instrumentality thereof, shall be the same as set forth in the grading certificate from which the appeal is taken. If the result of any appeal grading discloses that a material error was made in the grading appealed from, no fee shall be required.

§ 58.41 *Fees for additional copies of grading certificates.* Additional copies of any grading certificates, other than those provided for in § 58.20, may be supplied to any interested party upon payment of a fee of \$1.50 for each set of five, or fewer copies.

§ 58.42 *Traveling expenses and other charges.* Charges may be made to cover the cost of traveling and other expenses incurred by the Service in connection with the performance of any grading service.

#### § 53.43 *Butter, cheddar cheese and miscellaneous dairy products grading fees.*

(a) When all the bulk packages in a lot are individually identified by churning of butter or vat of cheddar cheese, the following fees shall be applicable:

For 3 or less churnings or vats (total marked net weight less than 15,000 pounds) .....	\$3.00
For each churning or vat in excess of 3, an additional charge of .....	.45

A minimum charge of \$9.00 shall be applicable to any lot of butter or cheddar cheese weighing 15,000 to 20,000 pounds inclusive, marked net weight, plus a charge of \$2.00 for each 5,000 pounds or fraction thereof in excess of 20,000 pounds.

(b) For bulk packages of butter or cheddar cheese not individually identified by churning or vat; bulk cheeses other than cheddar, and dairy products packed in consumer-type packages, the following fees, based on marked net weight, shall be applicable:

For 300 pounds, or less .....	\$2.50
For 301 to 1,000 pounds, inclusive .....	3.00
For 1,001 to 3,000 pounds, inclusive .....	4.00
For 3,001 to 6,000 pounds, inclusive .....	5.00
For 6,001 to 10,000 pounds, inclusive .....	7.00
For 10,001 to 15,000 pounds, inclusive .....	9.25
For 15,001 to 20,000 pounds, inclusive .....	11.50
For each additional 5,000 pounds, or fraction thereof, in excess of 20,000 pounds .....	2.00

(c) Fees for grading lots of miscellaneous dairy products including small lots of more than one type of product covered by a single grading certificate, may be based on the actual time required to perform the service at the rate of \$5.00 per hour, with a minimum charge of \$2.50.

#### § 58.44 *Milk sampling fees.*

(a) For each sampling of any lot of



dry milk, based on marked net weight, the following fees shall be applicable:

For 3,000 pounds or less.....	\$3.75
For 3,001 to 6,000 pounds, inclusive.....	5.00
For 6,001 to 10,000 pounds, inclusive.....	6.50
For each additional 10,000 pounds, or fraction thereof, in excess of 10,000 pounds.....	2.25

(b) For each lot of evaporated or condensed milk, the following fees shall be applicable:

For 200 packages or less.....	\$3.75
For 201 to 400 packages, inclusive.....	5.00
For 401 to 600 packages, inclusive.....	6.50
For each additional 600 packages, or fraction thereof, in excess of 600 packages.....	2.25

§ 58.45 *Fees for laboratory analyses.*  
For each of the following laboratory analyses, the fee referable thereto shall be applicable except as otherwise provided in paragraph (h) of this section.

(a) *Dry milk, dry whey.*

Scorched particles.....	\$0.50
Moisture.....	1.50
Fat.....	2.00
Solubility.....	.50
Bacteriological plate count.....	1.50
Bacteriological direct count.....	1.50
Titratable acidity.....	.50
Flavor; color.....	.50
Alkalinity of ash.....	2.00
E. coli (presumptive).....	1.80
Coliform (presumptive test solid media).....	1.50
Oxygen.....	\$2.00
Whey protein test, single sample.....	1.50
Whey protein test (for each additional sample in the same shipment).....	.75
Iron.....	5.50
Copper.....	5.50

(b) *Evaporated milk.*

Solids.....	\$1.50
Fat.....	2.00
Flavor, color body.....	.75
Net weight.....	.50
Sediment.....	.75

(c) *Sweetened condensed milk.*

Solids.....	\$1.50
Fat.....	2.00
Sugar.....	3.50
Sediment.....	.75
Bacteriological plate count.....	1.50
Yeast and mold count.....	1.50
E. coli count (presumptive).....	1.80
Coliform (presumptive test solid media).....	1.50
Net weight.....	.50
Flavor, color, body.....	.75
Viscosity.....	.75

(d) *Natural cheese.*

Moisture.....	\$2.00
Moisture in duplicate.....	3.00
Moisture in duplicate and fat (dry basis) complete.....	5.00
Fat (dry basis) single sample.....	4.00
Fat (dry basis) for each additional sample in the same shipment.....	3.00

(e) *Process cheese.*

Moisture.....	\$2.00
Moisture and fat (dry basis) complete.....	4.00

(f) *Butter oil (milk fat).*

Moisture.....	\$1.50
Fat.....	2.00

(g) *Butter.*

Salt.....	\$0.50
Moisture.....	1.50
Fat.....	2.00
Complete Kohman analysis, single sample.....	3.50
Complete Kohman analysis (for each additional sample in same shipment).....	2.50

(h) *Bacteriological analyses and other specified determinations with respect to individual tests for one factor.*

Bacteriological plate count.....	\$1.75
Bacteriological direct count.....	1.50
E. coli count (presumptive test solid media).....	2.00
Coliform (presumptive).....	1.80
Yeast and mold count.....	1.50
Sediment.....	1.00
pH determination.....	.75
Flavor, color, body.....	1.00
Scorched particles.....	1.00
Extraneous matter.....	2.00
Lactose.....	5.00
Iron.....	5.50
Copper.....	5.50
Protein (Kjeldahl).....	3.00
Plant survey "line" samples, based on time required to perform such services, per hour.....	3.60
Phosphatase test.....	1.00
Storch test.....	1.00

(i) *Ice cream.*

Fat.....	\$2.00
Total solids.....	1.50
Bacteriological plate count.....	1.50
Coliform (presumptive).....	1.50
Net weight.....	.50

(j) *Fluid milk.*

Fat (Babcock).....	\$1.00
Milk solids not fat.....	1.50
Bacteriological plate count.....	1.50
Bacteriological direct count.....	1.50
Cryoscope test for added water.....	1.50
Coliform (presumptive).....	1.50



§ 58.46 *Additional charges.* With respect to any grading service performed in a freight or express car or any other place where the entire lot of the product is not readily accessible to the grader, inspector or sampler, if the time required for the performance of such service is greater than would otherwise be required if the entire lot were readily accessible, as aforesaid, a fee of \$4.00 shall be charged in addition to the applicable rates specified in § 58.43 to § 58.45, both inclusive.

§ 58.47 *On a contract basis.* Fees to be charged and collected for any service, other than for an appeal grading, on a contract basis, shall be such as are provided in such contract. The fees to be charged for any appeal grading shall be as provided in § 58.38 to § 58.45, both inclusive.

§ 58.48 *Fees for grading service performed under cooperative agreement.* The fees to be charged and collected for any service performed under cooperative agreement shall be those provided for by such agreement.

#### MARKING, BRANDING, AND IDENTIFYING PRODUCT

§ 58.49 *Authority to use official identification.* Whenever the Administrator determines that the granting of authority to any person to package any product, graded pursuant to this part, and to use official identification, pursuant to § 58.49 to § 58.57, both inclusive, will not be inconsistent with the act and this part, he may authorize such use of official identification. Any application for such authority shall be submitted to the Administrator in such form as he may require.

§ 58.50 *Approval and form of official identification.* (a) Any grade label, inspection mark, or packaging material which is to be used as official identification shall be used only in such manner as the Administrator may prescribe; and such label, inspection mark, and packaging material shall be of such form and contain such information as the Administrator may require. No grade label, inspection mark, or packaging material may be used in the identification of any graded or inspected product unless finished copies or samples of such grade label, inspection mark, and packaging material have been approved by the Administrator.

(b) Inspection or grade mark permitted to be used to officially identify packages containing dairy products which are inspected or graded pursuant to this part shall be contained in a shield in the form and design indicated in figures 1, 2, 3 and 4 of this section or such other form or design as may be approved by the Administrator.

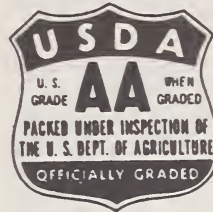


FIGURE 1.



FIGURE 2.



FIGURE 3.



FIGURE 4.

Design illustrated in figure 1 is used for graded product under USDA inspection. Designs illustrated in figures 2 and 3 are used for graded products processed and packed under USDA quality control service. Design illustrated in figure 4 is used for inspected product (when U. S. standards for grades not established) processed and packed under USDA quality control service. The grade or inspection identification shall be printed on the carton, or on the wrapper, or on both, and preferably on one of the main panels of the carton or wrapper. The shield identification shall be not less than  $\frac{3}{4}$  inch by  $\frac{3}{4}$  inch in size, and preferably one inch by one inch on one-pound cartons or wrappers.

(c) Labelling and official identification under this part shall be limited to U. S. Grade B or higher, or to an equivalent standard of quality for U. S. name grades or numerical score grades or when U. S. Standards for grades of a product have not been established.

(d) Sketches, proofs, or photostatic copies of all proposed packaging materials, grade labels, and inspection marks to be used as official identification shall be submitted to the Chief of the

Inspection and Grading Branch, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C., for tentative approval prior to acquisition of a supply of material bearing such identification.

(e) Finished copies in quadruplicate, of the tentatively approved packaging materials, grade labels, and inspection marks shall be transmitted to the Chief of the Inspection and Grading Branch for final approval prior to their use as official identification.

§ 58.51 *Information required on official identification label.* Each grade or inspection label which is to be used as official identification shall conspicuously indicate the U. S. grade of the product it identifies and appropriate terminology if manufactured or processed under inspection. It shall also include the appropriate phrase: "Officially graded," "Officially inspected," "Federal-State graded," or "Government graded." When required by the Administrator, the grade or inspection label shall also include all or any portion of the information set forth in paragraphs (a) and (b) of this section.

(a) The grade identification label on butter packaging material shall be stamped or perforated with the date of grading and the number of the grading certificate issued on the product.

(b) The grade or inspection label on packaging material for dairy products other than butter shall be stamped or perforated with a code number to indicate lot and date packed.

(c) With respect to paragraphs (a) and (b) of this section, the date of grading or date of inspection may be shown in form of a code provided such code is made available to and approved by the Administrator.

§ 58.52 *Time limit for packaging graded butter, natural cheese or dry milk solids with grade or other official identification label.* Any lot of butter which is graded for packaging with grade or other official identification shall be packaged within ten days immediately following the date of grading and any lot of natural cheese or dry milk shall be packaged within 30 days immediately following date of grading provided the product is properly stored during the ten or thirty day period. If the product is moved to another location a regrading or a reinspection shall be required.

#### PREREQUISITES TO PACKAGING PRODUCTS WITH GRADE IDENTIFICATION LABELS

§ 58.53 *Supervisor of packaging required.* The official identification of any graded or inspected product, as provided in §§ 58.50 to 58.57, both inclusive, shall be done only under the supervision of a grader, inspector, or supervisor of packaging. The authority to use grade or inspection identification labels may be granted by the Administrator only to applicants who utilize the services of a supervisor of packaging in accordance with this part. The supervisor of packaging shall have jurisdiction over the use and handling of all packaging material bearing any official identification.

§ 58.54 *Packing and packaging room and equipment shall be clean and sanitary.* Each applicant who is granted the authority to package any product with a grade identification label and who operates, for such purpose, a printing and packaging room, shall maintain the room and the equipment therein in a clean and sanitary condition and, in addition, in accordance with the instructions of the Administrator.

§ 58.55 *Facilities for incubating butter samples required.* Each applicant granted the authority, as aforesaid, to package graded butter with grade identification labels shall provide and maintain a cabinet of suitable construction, equipped with temperature control, for the purpose of incubating samples of graded butter. Suitable facilities for the purpose of cleaning and sterilizing the equipment used in performing such incubation also shall be provided by such applicant.

§ 58.56 *Incubation of butter samples to determine keeping quality.* (a) Samples of butter may be taken by a grader, pursuant to the instructions of the Administrator, from any lot of butter which is submitted for grading and packaging with grade identification labels, for the purpose of determining, by subsequent examination, whether such butter possesses satisfactory keeping quality, as determined by the grader in accordance with such standards as the Administrator may prescribe.

(b) Samples of butter may be taken by a grader for keeping quality tests pursuant to the instructions of the Administrator, from any lot of butter submitted for grading prior to issuance of the grading certificate.



**§ 58.57 Butter of known unsatisfactory keeping quality shall not be eligible for packaging with grade identification labels.** (a) Any butter produced in a creamery whose production of butter, within 30 days prior to current grading, has shown unsatisfactory keeping quality, as evidenced by the keeping quality test pursuant to § 58.56, shall not be packaged with any grade identification label until it is determined by the grader, that such butter possesses satisfactory keeping quality.

(b) Any manufacturing or processing plants supplying product, directly or indirectly, for packaging with official identification shall be subject to survey and inspection. Product shall not be eligible for grading and official identification if processed in a plant which, on inspection, shows insanitary or otherwise unsatisfactory operating conditions.

#### VIOLATIONS

**§ 58.58 Debarment of service.** (a) The following acts or practices, or the causing thereof, may be deemed sufficient cause for the debarment, by the Administrator, of any person, including any agents, officers, subsidiaries, or affiliates of such person, from any or all benefits of the act for a specified period after notice and opportunity for hearing has been accorded him.

(1) *Fraud or misrepresentation.* Any wilful misrepresentation or deceptive or fraudulent practice or act found to be made or committed by any person in connection with:

(i) The making or filing of any application for any grading service, inspection service, or sampling service, appeal, or regrading service;

(ii) The making of the product accessible for grading, inspection, or sampling;

(iii) The making, issuing or using or attempting to issue or use any grading certificate or inspection certificate issued pursuant to the regulations in this part or the use of any official stamp, label or identification;

(iv) The use of the terms, "United States," or "U. S.," "Officially graded," "Officially inspected," "Federal-State graded," or "Government graded," or terms of similar import in the labeling or advertising of any product without stating in conjunction therewith the official U. S. grade of the product; or

(v) The use of any of the aforesaid terms or an official stamp, label, or identification in the labeling or advertising of

any product that has not been graded pursuant to this part.

(2) *Use of facsimile form.* Using or attempting to use a form which simulates in whole or in part any official identification for the purpose of purporting to evidence the U. S. grade of any product; or the unauthorized use of a facsimile form which simulates in whole or in part any official grading or inspection certificate, stamp, label, or other identification for the purpose of purporting to evidence a grade or other official inspection mark; and

(3) *Mislabeling.* The use of any words, numerals, letters, or facsimile form which simulates in whole or in part any identification purporting to be a grade when such product does not comply with any recognized standards in general use for such grade, and such activity may be deemed sufficient cause for debarring such person from any or all benefits of the act.

(4) *Wilful violation of the regulations.* Wilful violation of the regulations in this part or the act, or the instructions or specifications issued by the Administrator.

(5) *Interfering with a grader, inspector, or sampler.* Any interference with or obstruction or any attempted interference or obstruction of any grader, inspector, or sampler in the performance of his duties by intimidation, threat, bribery, assault, or any other improper means.

(b) Whenever the Administrator has reason to believe that any person, or his employee, agent, or representative has wilfully, flagrantly or repeatedly committed any of the acts or practices specified in paragraph (a) of this section, he may without hearing direct that the benefits of the act be denied such person, including any agents, officers, subsidiaries or affiliates of such person, pending investigation and hearing and shall give notice thereof by registered mail. A written petition for reconsideration of such interim denial may be filed with the Administrator by any person so denied the benefits of the act if postmarked or delivered within 10 days after notice of the interim denial. Such petition shall state specifically the errors alleged to have been made by the Administrator in denying the benefits of the act pending investigation and hearing. Within 20 days following the receipt of such a petition for reconsideration, the Administrator shall reinstate the benefits of the act



or notify the petitioner by registered mail of the reasons for continued interim denial.

#### MISCELLANEOUS

§ 58.59 *Political activity.* All graders, inspectors, and samplers are forbidden during the period of their respective appointments or licenses, to take an active part in political management or in political campaigns. Political activities in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate, or any measure to be voted upon, is prohibited. This applies to all appointees, including, but not being limited to, temporary and cooperative employees and employees on leave of absence with or without pay. Wilful violation of this section will constitute grounds for dismissal in the case of appointees and revocation of licenses in the case of licensees.

§ 58.60 *Report of violations.* Each grader, inspector, sampler, and supervisor of packaging shall report, in the manner prescribed by the Administrator, all violations and noncompliances under the act and this part of which such grader, inspector, sampler, or supervisor of packaging has knowledge.

§ 58.61 *Publications.* Publications under the act and this part shall be made in the FEDERAL REGISTER, the Service and Regulatory Announcements of the Department, and such other media as the Administrator may approve for the purpose.

§ 58.62 *Other applicable regulations.* Compliance with the regulations in this part shall not excuse failure to comply with any other Federal, or any State, or municipal applicable laws or regulations.

§ 58.63 *Identification.* Each grader, inspector, sampler, and supervisor of packaging shall have in his possession at all times, and present upon request, while on duty, the means of identification furnished by the Department to such person.

(66 Stat. 1099; 7 U.S.C. 1624)